

The Illinois Retailers' Occupation Tax and Use Tax do not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce. See 86 Ill. Adm. Code 130.340. (This is a GIL).

July 27, 2001

Dear Xxxxx:

This letter is in response to your letter received by our office on June 19, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Our client has asked that we write to request a determination of their possible exemption from sales tax and use tax in the state of Illinois. This Company is based in STATE, and may begin doing business in Illinois in the near future. They regularly purchase helicopter parts, and occasionally helicopters, for use in the air ambulance service that they supply to various hospitals, currently located in the states of STATES. Flights for these services go into and out of these states, and occasionally to other states. The Company's purchases of helicopters and helicopter parts are exempt from sales tax and use tax in the STATES; enclosed is a copy of Missouri Case No. 90-001468RS, *Rocky Mountain Helicopters, Inc. v. Director of Revenue*, which is the basis for the exemption in Missouri. Also enclosed is a copy of the company's certificate under Federal Aviation Regulation 135 as an 'air carrier.'

Please consider this information and provide a written determination as to whether the purchase of helicopters and/or helicopter parts for use in these programs qualifies for an exemption from Illinois sales tax and use tax. Thank you for your assistance in this matter.

DEPARTMENT'S RESPONSE:

Please be advised that the administrative hearing decision of the Missouri Department of Revenue enclosed with your letter is not binding upon the Illinois Department of Revenue. In addition, the Missouri hearing decision was based upon specific facts regarding the activities of a corporation other than your client. The Illinois Department of Revenue cannot provide you with the determination you have requested in the context of a General Information Letter and based upon the

very limited information contained in your letter. We are providing below some general information that will be of assistance to you.

The Illinois Retailers' Occupation Tax and Use Tax do not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce. The Department's rules governing the rolling stock exemption are found at 86 Ill. Adm. Code 130.340, copy enclosed.

The exemption also applies to sales of tangible personal property to lessors under leases of one year or longer executed or in effect at the time of purchase with interstate carriers for hire for use as rolling stock moving in interstate commerce. A lessor will not incur Use Tax on the purchase of the vehicle that is leased to the interstate carrier for hire for use as rolling stock moving in interstate commerce under a lease term of one year or longer. See 35 ILCS 105/3-55(b) and 120/2-5(12). If a lessor leases a vehicle to an interstate carrier for hire under a lease term of less than one year, the rolling stock exemption is also available because the tax does not apply to the use by (or sale to) lessors, owners, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce. See 35 ILCS 105/3-55(c) and 120/2-5(13).

Effective August 14, 1999, motor vehicles, trailers, and property attached to those motor vehicles and trailers must carry persons or property for hire in interstate commerce on 15 or more occasions within a 12- month period to qualify for the exemption. For other types of property (such as aircraft) used in interstate commerce, the interstate carriers must be able to show, from their books and records, that the property has moved in interstate commerce for hire on a regular and frequent basis in order to qualify for the exemption. See the enclosed copy of 86 Ill. Adm. Code 130.340.

Purchasers also must be recognized by the appropriate federal or state regulatory agency as interstate carriers for hire and have received a Certificate of Authority to engage in interstate commerce. Please note that it is not the type of item that determines whether or not it qualifies as rolling stock, but rather how a qualifying interstate carrier uses the item. In addition to receiving the proper Certificate of Authority, purchasers should be aware that only those items used specifically as rolling stock would qualify. See the enclosed copy of 86 Ill. Adm. Code 130.340. The Department understands that the Air Carrier Certificate issued by the Federal Aviation Administration (a copy of which was enclosed regarding your client) authorizes the certificate holder to operate as an air carrier and conduct common carriage operations in accordance with the Federal Aviation Act of 1958. The Department understands that such a certificate only authorizes the certificate holder to operate on a "for hire" basis and does not distinguish between interstate commerce and intrastate commerce. In an audit situation, the Department will examine the air carrier's records in detail to verify that the flights are qualifying movements (both interstate and for hire) and that such flights occur on a regular and frequent basis.

If you want a specific determination regarding your client's ability to claim the rolling stock exemption, we recommend that you send in a request for a Private Letter Ruling as described below with a complete description of what activities your client will engage in and a copy of any relevant contracts with the hospitals involved.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.